

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE**

FILED March 23, 1999 Cecil Crowson, Jr. Appellate Court Clerk
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MITCHELL BROGDON,)	
)	
Plaintiff/Appellee)	HAMILTON CIRCUIT
)	
v.)	NO. 03S01-9803-CV-00021
)	
CHATTANOOGA GENERAL)	HON. ROBERT M. SUMMITT,
SERVICES, and LUMBERMEN'S)	JUDGE
MUTUAL CASUALTY COMPANY,)	
)	
Defendant/Appellant)	

For the Appellant:

For the Appellee:

Phillip A. Fleissner
David C. Nagle
800 Vine Street
Chattanooga, TN 37403

MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Senior Judge William H. Inman

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The defendant appeals from an order of the trial judge entered on the 26th day of January 1998 which set aside a portion of a final judgment in an approved settlement of a compensation claim made by the plaintiff against the defendant.

The approved settlement and judgment thereon was entered on October 11, 1996, and among the provisions therein was the approval of medical care for a period of one year. The care was to be provided by Dr. Lester F. Littell, an orthopedic surgeon. In addition, a fund of \$2,100.40 was established for future medical care.

On October 6, 1997, the plaintiff filed a motion to set aside or modify the judgment, asking that he be allowed to be seen by another or other doctors to determine if he should have back surgery.

No evidence was introduced in the hearing on the motion, although there were medical records from Dr. Littell and Dr. George Seiters, also an orthopedic surgeon. Both of these physicians were of the opinion the plaintiff did not require surgery.

In a sworn affidavit, the plaintiff alleged he was not allowed by the defendant to obtain a second opinion on whether he needed surgery. This statement was false. The insurance carrier as well approved an examination by Dr. Seiters, and Dr. Littell's notes reflect he referred the plaintiff to Dr. Seiters.

We are somewhat hampered in this case by the fact that counsel for the plaintiff withdrew as counsel in accordance with the rule allowing withdrawal. The

Supreme Court approved the withdrawal by an order dated November 2, 1998. The plaintiff apparently did not obtain other counsel and no brief has been filed by the plaintiff. Nevertheless, we have fully examined the record and can find no support for the action of the trial judge, under Rule 60 of the Tennessee Rules of Civil Procedure or otherwise, to set aside the original judgment in whole or in part.

We therefore reverse the judgment of the trial court which was entered on January 26, 1998, which leaves the original judgment in effect in its entirety.

The cost of this appeal is taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

William H. Inman, Senior Judge

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MITCHELL BROGDON,)	HAMILTON CIRCUIT
)	No. 96CV0304
Plaintiff-Appellee,)	
)	
)	No. 03S01-9803-CV -00021
v.)	
)	
CHATTANOOGA GENERAL)	Hon. Robert M. Summitt,
SERVICE, and LUMBERMEN'S)	Judge
MUTUAL CASUALTY COMPANY)	
)	
Defendant/Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the appellee, Mitchell Brogdon, for which execution may issue if necessary.

03/23/99